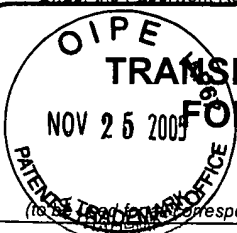


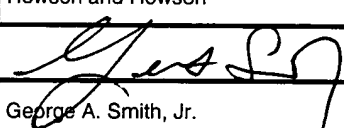
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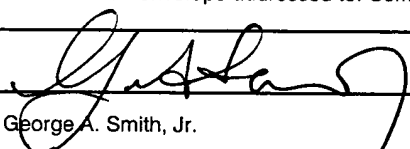
	Application Number	10/659,816
	Filing Date	09/11/2003
	First Named Inventor	David B. Lantz
	Art Unit	3653
	Examiner Name	J. Shapiro
Total Number of Pages in This Submission	Attorney Docket Number	ROY8USA

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
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<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
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<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	Remarks	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Howson and Howson		
Signature			
Printed name	George A. Smith, Jr.		
Date	11/23/2005	Reg. No.	24,442

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	George A. Smith, Jr.	Date	11/23/2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

Complete if Known

Application Number 10/659,816

Filing Date 09/11/2003

First Named Inventor David B. Lantz

Examiner Name J. Shapiro

Art Unit 3653

Attorney Docket No. ROY8USA

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 08-3040 Deposit Account Name: Howson and Howson

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, **except for the filing fee**☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims
_____ - 20 or HP = _____	x _____	= _____		Fee (\$)
				Fee Paid (\$)

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
_____ - 3 or HP = _____	x _____	= _____	

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE


If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief **Fees Paid (\$)** \$250.00**SUBMITTED BY**

Signature 	Registration No. (Attorney/Agent) <u>24,442</u>	Telephone <u>215-540-9200</u>
Name (Print/Type) <u>George A. Smith, Jr.</u>	Date <u>11/23/2005</u>	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.: 10/659,816
Applicant: David B. Lantz
Filed: 09/11/2003
TC/A.U.: 3653
Examiner: J. Shapiro
Docket No.: ROY8USA
Customer No. 00270

Confirmation No: 5260

MAIL STOP Appeal Brief - Patents
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P. O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING
UNDER 37 C.F.R. §1.8(a)(1)(ii)
(PATENT)

I certify that this paper is being deposited on the date shown below with the United States Postal Service, with sufficient postage, as first class mail and is addressed to "Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450."

Signed

Date:

November 23, 2005

Sir:

This appeal is from the final rejection of claims 28-42 in the Office Action dated June 23, 2005.

A check for the fee of \$250.00 for filing this Appeal Brief is attached. The Commissioner is hereby requested to charge any deficiency in the fee due with the filing of this paper, or credit any overpayment, to our Deposit Account, No. 08-3040.

The notice of appeal was filed September 23, 2005. This brief is therefore timely. However, please grant an extension of

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Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

time if necessary, and charge any extension fee to the above-mentioned deposit account.

I. REAL PARTY IN INTEREST

The real party in interest is the Applicant's Assignee, Royston LLC, a Georgia Limited Liability Company located at One Pickroy Road Jasper, GA 30143. Royston LLC acquired title through assignments recorded at Reel 014497 frame 0203 and Reel 015908, frame 0867.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

The pending claims are claims 28 through 42. All of the claims are rejected. This appeal, however, is limited to claims 32, 33, 34, 40, 41, and 42.

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

IV. STATUS OF AMENDMENTS

The amendment filed on August 17, 2005 was not entered because the examiner considered the proposed amendments to raise new issues that would require further consideration and/or search.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention is a checkout systems for a grocery store or the like, which is convertible from a configuration in which a customer's purchases are scanned by a cashier, and then conveyed directly to a location at which they can be bagged by another individual known as a "bagger," to an alternative configuration in which, after scanning, the purchases can be placed in bags by the cashier, and the bags can be conveniently delivered to the customer for placement in a shopping cart.

Referring to FIG. 1, the checkout system in accordance with the invention includes a front module 10a, on which goods are placed by the customer (page 3, lines 16-17), and a rear module 10b, to which the goods can be conveyed in the case where they are to be bagged by a bagger (page 3, lines 18-19). A bagging module 12 (page 3, lines 19-22), located between the front and

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

rear modules, is preferably in the form of a carousel, comprising a rotatable table 20 (page 4, line 7) and a bag-suspending support structure 22 having plural bag-supporting arms 38 (FIG. 6; page 4, lines 31-33; page 5, lines 11-14). As the cashier scans articles from the group placed by the customer on the front module, he or she can place the scanned articles directly into a bag supported on the bagging module on the cashier's side of the checkout system. When the bag is sufficiently full, the cashier can rotate the bagging module to move the bag toward the customer's side of the checkout system, and immediately begin filling a next bag.

If a bagger is available, the clerk can elect to have the bagger insert the scanned articles in bags. In this case, the cashier causes the bag support 22 to retract downward to a stowed position (FIGs. 2 - 5; page 4, lines 16 - 18), and causes an extendible member (FIGs. 2 - 5), having an article-supporting surface, to extend, over the bagging module, from the front module to the rear module, through a space previously occupied by a part of the bag support (FIGs. 1 - 5; page 2, lines 20-21). The upper support surface of the front module 10a can be a movable conveyor that is extendible over the bagging module when

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

the bag support is moved to its stowed position. (page 2, lines 19 - 21).

The claims on appeal are in two sets. The first set consisting of claims 32, 33 and 34, require the bag support to be movable horizontally "from a position at which a bag held by the bag support is located adjacent a clerk on one side of the checkout system to a position in which the bag is delivered to a customer on the other side of the checkout system." The second set, consisting of claims 40, 41 and 42, is similar, except that they require the bag support to be "rotatable about a vertical axis," i.e., they are more specifically directed to the carousel.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

All of the claims were rejected under 35 U.S.C. §103(a) as unpatentable over Wike, Jr. et al. (U.S. patent 6,427,915 B1) in view of Nguyen (U.S. patent 6,793,043) and further in view of Hoar (U.S. patent 5,131,499). Wike is relied upon for a checkout counter having front and rear modules, a bagwell, and extendible supports that are movable over the bagwell. Nguyen is relied upon for a rotating bagwell in a checkout counter having front

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

and rear modules. Hoar is relied upon for a rotating bag turret having a vertical adjustment capability.

All of the claims were also rejected under 35 U.S.C. §103(a) as unpatentable over Wike, Jr. et al (U.S. patent 6,427,915 B1) in view of Hoar (U.S. patent 5,131,499). Wike and Hoar are relied upon as in the first ground of rejection. In addition, Hoar is relied upon for a rotating bagwell having multiple positions for bags, and for a rotating table.

Both rejections are essentially based on the proposition that ". . . one ordinarily skilled in the art would recognize that in view of the use of the extensible conveyor (56, 58, 70) of Wike and the teaching of Hoar for adjusting the height of the bagwell, it would have been obvious to incorporate an adjustable height feature in Wike's bagwell to allow the bagwell to be adequately stowed below Wike's extensible conveyor position."

VII. ARGUMENT

Independent claim 32 is the broadest, and suitable as a single claim on which this appeal can be decided. The claims on appeal are grouped together, and no separate argument is being presented for any individual claim or group of claims.

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

(a) Claims 32, 33, 34, 40, 41, and 42

1. Wike in view of Nguyen and in view of Hoar

Claim 32 is directed to a checkout system having the following features:

- (a) front module
- (b) rear module
- (c) bagging module having a bag support movable horizontally for bag delivery and vertically from operative to stowed position
- (d) article supporting member extendible over bagging module
- (e) part of bag support, when in operative position, occupies space occupied by extendible member when extended over bagging module.

As mentioned above, Wike describes a convertible checkout counter having front and rear modules, a bag well, and extendible supports that are movable over the bag well. One such extendible support is a "set-aside" shelf 70. The other extendible member, as shown in FIGs. 12 and 13, is a take-away belt mechanism 58, that is movable over a cashier side bag well 62. Inside the bag well is a pair of parallel arms which, although not numbered, appear to be bag support arms.

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

Nguyen describes a checkout system having a bagging carousel.

Hoar describes a checkout device including a rotating carousel having bag supports. The carousel is vertically adjustable "to accommodate two different heights of checkout counters" (Hoar, col. 2, lines 49 - 50).

The issue on appeal is whether or not the differences between the invention defined in claim 32 and the prior art, as represented by Wike, Nguyen and Hoar, are such that the claimed subject matter, as a whole, would have been obvious to a person having ordinary skill in the art.

In Wike's FIG. 13, the bag support arms in bag well 62, are presumably at the optimum height for holding bags to be filled. Yet, the arms are situated well below the level of the bottom of the take-away belt mechanism 58 (and also below the bottom of the set-aside shelf 70). There is no reason to suppose that an adjustment of the height of the bag-supporting arms is necessary in order to provide clearance for the take-away belt mechanism. Even if it is conceded that a checkout system such as Wike's could be modified to incorporate a carousel, Wike's disclosure

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

supplies no reason to incorporate, into such a modified system, a carousel having a height adjustment capability.

Hoar, of course, has his own reason for carousel height adjustment, which is to accommodate different checkout counter heights. The Hoar carousel is apparently a retrofit device, constructed so that it can easily be made to conform to the counter height when installed at a retail location, without the need for custom manufacture. In FIG. 4, Hoar depicts a carousel having a height adjustment feature, where the intent of the height adjustment is apparently to enable the top of the carousel to be positioned flush with the top of the conveyor 12. This is exactly what Wike does not want. Wike's bag supports are already below the counter level, at the optimum bag loading height, and at that height they would not interfere with the take-away belt mechanism when it is slid out to bridge the bag well. Therefore, at least insofar as the teachings of Wike are concerned, there would be no reason a person having ordinary skill in the art to select a height-adjustable carousel for use in the Wike system.

Furthermore, even if, for the purpose described in Hoar, one were to select a Hoar-type carousel for use in a system having an extendible bridge, such as Wike's, it is speculation at best to

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

conclude that the result would be a system in which the carousel height could be adjusted through a range in which it can alternatively block and clear the extendible bridge. If initially installed for a flush relationship with the conveyor surfaces as in Hoar's FIG. 3, the carousel might be adjustable upward, downward, or both upward and downward. But there is no assurance that it would be adjustable downward at all, much less downward by a sufficient distance to clear the extendible bridge. Similarly, even if the Hoar carousel were initially installed to match the optimum bag support height, there is no assurance that it could be raised at all, much less raised enough to block the extendible bridge. Hoar gives no direction as to which of many variations should be adopted. Thus, to conclude that Hoar and Wike render claim 32 unpatentable because Hoar teaches the use of a carousel having a height adjustment capability would be to apply the "obvious to try" criterion, long held not to make out a case of obviousness under 35 U.S.C. §103. In re Deuel, 51 F3d 1552, 234 USPQ 2d 1210 (Fed. Cir. 1995).

In short, neither Wike nor Hoar provides motivation to incorporate a vertically adjustable bag delivery device into a checkout system having an extending bagwell bridge, where the

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

result is a system in which, as set forth in claim 32, "at least part of said bag support, when in its said operative position, occupies space which is occupied by said extendible member when said extendible member extends over said bagging module."

It is tempting to infer, from the fact that the bag support arms in Wike's cashier side bag well appear to be tilted down in Wike's FIG. 12, that the arms are tilted so that they are out of the way of the takeaway belt mechanism 58, when the mechanism is extended across the cashier side bag well. However, from FIG. 13, it is clear that, even when the bag support arms are horizontal, they are not in the way of the takeaway belt. Nothing in Wike's lengthy specification explains why the bag support arms are shown as they are in FIG. 12. It appears from FIGs. 12, 13 and 15 that the panel from which the bag holding arms extend is hinged and tiltable downward as a whole, possibly so that the panel itself is moved out of the way of the take-away belt mechanism 58 in FIG. 12, or the set-aside shelf 70 in FIG. 15, when one or the other is moved over the cashier side bag well. In any event, the reason, if there is one, must be something other than moving the bag support to providing

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

clearance for extension of the takeaway belt mechanism over the bag well.

2. Wike in view of Hoar

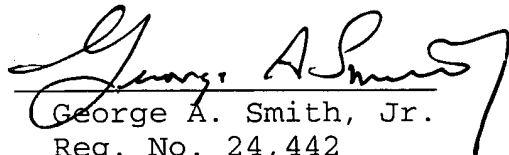
Both rejections depend on Hoar for a teaching of adjusting the height of a bag well. The same arguments as set forth above apply to the rejection on Wike in view of Hoar, and are here incorporated by reference.

CONCLUSION

The rejections of claims 32, 33, 34, 40, 41, and 42 under 35 U.S.C. §103 are in error, and should be reversed.

Respectfully submitted,
HOWSON & HOWSON

By



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Enclosures:

Appendix of claims

Check for \$250

Evidence Appendix

Related Proceedings Appendix

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

CLAIMS APPENDIX

LISTING OF CLAIMS:

28(previously presented). A checkout system comprising:
a front module having an upper support surface for supporting articles;
a rear module having an upper support surface for supporting bags filled with articles; and
a bagging module located between the front and rear modules, the bagging module comprising a bag support engageable with an upper part of a bag for holding the bag in an upright and open condition for receiving articles, said bag support being movable horizontally from a position at which a bag held by the bag support is located adjacent a clerk on one side of the checkout system to a position in which the bag is delivered to a customer on the other side of the checkout system;
wherein said bag support is vertically movable downward, from an operative position wherein a bag may be supported by said bag support in an upright and open condition for receiving article, to a stowed position wherein an uppermost portion of said support is below said upper support surfaces of said front and rear modules.

29(previously presented). The checkout system according to claim 28, wherein said bagging module further comprises a table, movable horizontally with said bag support, said table having an

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

upwardly facing support surface engageable with the bottom of a bag held by said bag support.

30(previously presented). The checkout system according to claim 28, wherein said bag support comprises arms engageable with upper parts of plural bags spaced laterally from one another, for holding said laterally spaced bags in an upright and open condition for receiving articles.

31(previously presented). The checkout system according to claim 28, wherein one of said front and rear modules includes an extendible member having an article-supporting surface, said extendible member being extendible over said bagging module when said bag support is moved to its stowed position, whereby said article-supporting surface extends from said front module to said rear module above said bagging module.

32(previously presented). The checkout system according to claim 31, in which at least part of said bag support, when in its said operative position, occupies space which is occupied by said extendible member when said extendible member extends over said bagging module.

33(previously presented). The checkout system according to claim 28, wherein the upper support surface of the front module is a movable conveyor for transporting articles, and wherein said movable conveyor is extendible over said bagging module when said bag support is moved to its stowed position.

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

34(previously presented). The checkout system according to claim 33, in which at least part of said bag support, when in its said operative position, occupies space which is occupied by said movable conveyor when said movable conveyor extends over said bagging module.

35(previously presented). A checkout system comprising:
a front module having an upper support surface for supporting articles;
a rear module having an upper support surface for supporting bags filled with articles; and
a bagging module located between the front and rear modules, the bagging module comprising a bag support engageable with an upper part of a bag for holding the bag in an upright and open condition for receiving articles, said bag support being rotatable about a vertical axis laterally spaced from the location at which the bag is held by the bag support, from a position at which a bag held by the bag support is located adjacent a clerk on one side of the checkout system to a position in which the bag is delivered to a customer on the other side of the checkout system;
wherein said bag support is vertically movable downward, from an operative position wherein a bag may be supported by said bag support in an upright and open condition for receiving article, to a stowed position wherein an uppermost portion of said support is below

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

said upper support surfaces of said front and rear modules.

36(previously presented). The checkout system according to claim 35, wherein said bagging module further comprises a table rotatable with said bag support about said vertical axis, said table having an upwardly facing support surface engageable with the bottom of a bag held by said bag support.

37(previously presented). The checkout system according to claim 36, wherein said bag support comprises a vertical member disposed along said axis, said vertical member extending through said table at least when said bag support is moved to its stowed position.

38(previously presented). The checkout system according to claim 35, wherein said bag support includes a vertical member extending along said vertical axis, and arms extending laterally from said vertical member, said arms being engageable with upper parts of plural bags spaced from one another circumferentially around said vertical axis, for holding said bags in an upright and open condition for receiving articles.

39(previously presented). The checkout system according to claim 35, wherein one of said front and rear modules includes an extendible member having an article-supporting surface, said extendible member being extendible over said bagging module when said bag support is moved to its stowed position, whereby said

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

article-supporting surface extends from said front module to said rear module above said bagging module.

40(previously presented). The checkout system according to claim 39, in which at least part of said bag support, when in its said operative position, occupies space which is occupied by said extendible member when said extendible member extends over said bagging module.

41(previously presented). The checkout system according to claim 35, wherein the upper support surface of the front module is a movable conveyor for transporting articles, and wherein said movable conveyor is extendible over said bagging module when said extendible support is moved to its stowed position.

42(previously presented). The checkout system according to claim 41, in which at least part of said bag support, when in its said operative position, occupies space which is occupied by said movable conveyor when said movable conveyor extends over said bagging module.

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

EVIDENCE APPENDIX

none

Application No.: 10/659,816
Appeal Brief dated: November 23, 2005

RELATED PROCEEDINGS APPENDIX

none